THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:17.04.2007

+ **WP(C) No.17583/2006**

UNION PUBLIC SERVICE COMMISSION ...Petitioner

- versus -

CENTRAN INFORMATION COMMISSION & OTHERS ...Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr S.K. Mishra, Sr Advocate with Mr Anuj Rajput and Mr Rahul Chauhan
For the Respondent No.1	:	Mr K.C. Mittal with Mr Mrinal Madhav
For the Respondent Nos. 2-5, 7-23	:	Mr Aman Lekhi, Sr Advocate with Mr Sumit Kumar, Mr Rajan K. Chourasia, Mr Jaspreet, Mr S. Rai and Mr Rakesh Kumar.
For the Respondent No.24.	:	Mr Prashant Bhushan with Mr Devvrat

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

1. The Union Public Service Commission (UPSC) has filed this writ petition praying for the setting aside of the order dated 13.11.2006 passed by the Central Information Commission, New Delhi in an appeal under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act').

2. The issue involved in the present petition relates to the disclosure of cut-off marks for the optional subjects as well as for general studies of the Civil Services (Preliminary Examination), 2006, which was conducted by the UPSC. The disclosure of the separate cut-off marks in respect of each subject in the said examination for the different categories of candidates, namely, General, OBC, SC, ST and Physically Handicapped is also in question. The question of disclosure of the individual marks obtained by each of the candidates as well as the disclosure of the model answers to each series of questions for all the subjects is also in issue. The respondent nos. 2 to 24 are candidates, who had appeared in the Civil Services (Preliminary) Examination, 2006 and had sought this information from the Central Public Information Officer (CPIO) of the UPSC. For this purpose, applications were made sometime in August, 2006. These applications were disposed of by separate orders by the CPIO. One such order dated 07.09.2006 has been placed in the paper book as Annexure-B to the petition. Rejecting the applications for information, the CPIO gave, *inter alia*, the following reasons:-

> "1) The information sought was in the nature of crucial secrets and constituted intellectual property of the UPSC within the meaning of Section 8 (1) (d) of the RTI Act;

2) There was no public interest in requiring the disclosure of such information;

3) The disclosure of the information would undermine the integrity, strength and efficacy and competitive public examination system conducted by the UPSC;

4) The preliminary examination for the Civil Services was only a screening test and it had been specifically notified that no mark sheets would be supplied to candidates and that no correspondence would be entertained by the Commission in this regard."

3. Being aggrieved by the rejection of their applications and consequent non-disclosure of the information sought by them, the respondents 2 to 24 filed two separate appeals on 03.10.2006 and 06.10.2006 before the appellate authority of the UPSC under Section 19 (1) of the RTI Act. Apparently, some of the candidates alongwith others had also filed complaints before the Central Information Commission under Section 18 (1) (b) of the RTI Act. When these applications were being considered by the Central Information Commission, upon learning that the two appeals were pending before the appellate authority of the UPSC, the Central Information Commission directed that the said two appeals be disposed of within a week.

Consequent thereupon, the appeals were disposed of by the appellate authority of the UPSC on 20.10.2006 upholding the refusal by the CPIO.

4. In the order dated 20.10.2006, the appellate authority referred to paragraph 2 Section I, Appendix 1 of the Rules for Civil Services Examination, 2006 as notified by the Department of Personnel and Training on 03.12.2005 to indicate the nature of the examination. The said reference made it clear that the preliminary examination consisted of two papers of Objective Type (Multiple Choice Questions) and would carry a maximum of 450 marks in the subjects specified in Section (A) of Section II of the said Rules for Civil Services Examination, 2006. It was also specified that the examination was meant to serve as a screening test only and that the marks obtained in the Preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination, would not be counted for determining the final order of merit. It was also indicated that the number of candidates admitted to the Main Examination would be about 12 to 13 times the total approximate number of vacancies to be filled in the year in the various services and posts.

5. In the order dated 20.10.2006, it was categorically stated in paragraph 9.3 as under:-

> "9.3 In the Civil Services Examination, no subject-wise cut offs are fixed by the Commission as such.

> Therefore, the information as requested by the applicant is non-existent and cannot be made available."

It was noted in the said order that the UPSC shortlisted 7766 candidates, strictly in order of merit, as laid down under the rules, as against 632 vacancies reported by various participating Ministries for the Civil Services Examination, 2006. It was again mentioned that "No fixed cut-off percentage have been laid down under the rules as such". Accordingly, the appellate authority held that the information with regard to cut-off marks cannot be made available to the applicants.

6. In the order dated 20.10.2006, the appellate authority also noted that the process of evenly evaluating the performance of candidates across different subjects has been developed and designed by the UPSC. It was observed that the disclosure of the individual scores alongwith the keys of question papers would result in the derailment of the entire structure and process of Civil Services Examination and that the sharing of the complex intricacies on evaluation of performance in various optional subjects would seriously endanger the process of secrecy and confidentiality of the said examination.

7. It was observed that unpredictability of the methodology of testing was an inherent feature of any system of testing in a competitive examination

and that in case the details of selection keys, cut-offs, individual marks and the methodology of scaling were publicly disclosed / shared, "with the prospective candidates", the examination itself would loose its most unique feature of unpredictability and competitiveness. The appellate authority also held that the non-disclosure of information desired was also covered under the provisions of Section 8 (1) (d) of the RTI Act. With these observations, the appellate authority rejected the appeals and upheld the orders of the CPIO which amounted to non-disclosure of the information to the respondents 2 to 24. Thereafter, the matter reached the Central Information Commission by way of second appeal under Section 19 (3) of the RTI Act.

8. The said appeals were disposed of by the Full Bench of the Central Information Commission by an order dated 13.11.2006 whereby the following directions were made:-

> "i) the UPSC shall, within two weeks from the date of this order, disclose the marks assigned to each of the applicants for the Civil Services Preliminary Examination 2006 in General Studies and in Optional Papers; and
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> ii) The UPSC, within two weeks from the date of this order, shall also disclose the cut-off marks fixed in respect of the General Studies paper and in respect of each of the Optional Papers and if no such cut-off marks are there, it shall disclose the subject-wise marks assigned to short-listed candidates; and
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> iii) The UPSC shall examine and consider under Section 8 (1) (d) of the RTI Act the disclosure of the scaling system as it involves larger public interst in providing a level playing field for all aspirants and shall place the matter

> before the Competent Authority within one month from the date of this order. This will also cover the issue of disclosure of model answers, which we recommend should in any case be made public from time to time. In doing so, it shall duly take into account the provisions of Section 9 of the RTI Act."

9. Before the Central Information Commission, various points were taken by the respondents 2 to 24 in support of their appeals. They were, *inter alia*, that the finding that UPSC does not have any cut-offs is wrong; that the UPSC cannot withhold information under Section 8(1) (d) and 8 (2) of the RTI Act; that disclosure of the information sought would not derail the system; since marks of the Main Examination are published, there could be no objection to the marks of the Preliminary Examination being disclosed; the information available with the UPSC was not the intellectual property of the UPSC as UPSC was not involved in any form of commerce or trade. On behalf of the UPSC, it was contended before the Central Information Commission that there was no "pre-prescribed cut-off"; the scaling methodology developed by the UPSC constituted intellectual property under Section 8(1) (d) of the RTI Act; even if it did not constitute intellectual property, disclosure of the scaling method was protected under Section 8(1) (d) of the RTI Act as it would adversely affect the competitive position of third parties; the statistical aspects, such as individual marks, cut-off, keys, etc. are vital parts of the methodology and that disclosure of individual marks of thousands of candidates would be

time consuming and would make it difficult for the UPSC to conduct examinations on schedule.

10. The Central Information Commission in making the directions, indicated above, observed that UPSC is not an organisation that had been kept out of the reach of the RTI Act and that the onus lies on the CPIO to demonstrate as to why the information sought ought not to be disclosed. It also observed that the UPSC failed to explain how the individual marks themselves could constitute intellectual property of the UPSC. It was also of the view that there was no reason as to how the assigned marks or scaled marks obtained after applying the scaling methodology (whatever it might be) could be part of the intellectual property of the UPSC. A similar logic was applicable in respect of cut-off marks. With regard to the design of the question papers and the model answers in respect of each such question paper, the Central Information Commission came to the conclusion that the UPSC had the copyright in the same and that, therefore, was part of the intellectual property of the UPSC contemplated under Section 8(1) (d) of the RTI Act. Consequently, the UPSC was under no obligation to disclose such material, unless the larger public interest warranted the disclosure of such information. It is on the basis of this reasoning that the Central Information Commission made the directions referred to above.

11. Mr Sudarshan Mishra, the learned senior counsel appearing on behalf of the UPSC, explained that the Civil Services Examination comprises of two parts; the Preliminary Examination and the Main Examination which is followed by an interview. The present writ petition pertains to the Preliminary Examination. This examination is in the nature of a screening test in order to select about 12-13 times the number of vacancies in order of merit. The preliminary Examination, as already noted above, comprises of two papers, one being general studies which is compulsory for all candidates and another optional paper from out of the 23 subjects which are offered. He submitted that since the optional paper is not common to all the candidates and it depends upon the option taken by the candidates, a methodology had to be developed to make the marks obtained in these different subjects comparable across candidates. Through this methodology, scaling of marks is done so as to make the marks obtained in different subjects by different candidates comparable with each other. He submitted that scientific formulae are used for scaling of marks. These scientific formulae have been further adapted and modified by experts by using certain computer sub-routines to suit the needs and requirements of the UPSC for the said Preliminary Examination. He further submitted that insofar as the marks for general studies are concerned, no scaling is applied to them as the paper is common to all the candidates. He submitted that prior to the examination, no cut-offs can be prescribed and the cut-offs that are implemented are only post-examination. He also submitted that the marks

obtained in the preliminary examination are not at all counted in the Main Examination. The Preliminary Examination is merely in the nature of a screening test or a qualifying examination.

12. He submitted that revealing the cut-off marks as well as the individual marks and the keys to the question papers would enable unscrupulous persons to reverse engineer and arrive at the scaling system which is kept secret by the UPSC. If the scaling system adopted by the UPSC is disclosed or known to the public, then, according to Mr Mishra, the entire system could be undermined and would defeat the very purpose of selecting the best for the Civil Services.

13. Mr Mishra submitted that the UPSC is a Constitutional body created under Article 320 of the Constitution of India and that it is required, *inter alia*, to be consulted on all matters relating to methods of recruitment to the Civil Services and Civil Posts. Tracing the history of the Civil Services Examinations, Mr Mishra submitted that between 1947 and 1950, a combined competitive examination was held each year for recruitment to the Indian Administrative Service (IAS), the Indian Foreign Service (IFS), the Indian Police Service (IPS) and non-technical Central Civil Services. At that point of time, there were three compulsory papers; General English, Essay and General Knowledge of 150 marks each. The IAS, IFS and Central Civil Service

Examination had three optional subjects, while the IPS had only two. From 1951, two additional optional subjects of the Masters Degree standard were prescribed for the IAS and the IFS. A major review of the examination system was carried out by the Kothari Committee in 1974-77. Thereafter, a Common Unified Examination for the All India and Central Services Class-I was introduced. The examination was split-up into a Preliminary Examination and the Main Examination. The Preliminary Examination had two Objective Type Papers (General Studies of 150 marks and an Optional Subject of 300 marks). The preliminary examination was a screening test for the Civil Services (Main) Examination. This was followed by Main Examination having several papers and thereafter an interview. In 1988-89, the Satish Chandra Committee conducted a review of the Civil Services Examination and consequent thereupon, there were some changes made to the Main Examination and the interview test. He reiterated that a scaling methodology based on appropriate statistical principles is being followed by the Commission. He submitted that the scaling methodology has been developed by the UPSC with the association of renowned experts in the field alongwith application software and this was a part of the recommendation of the Kothari Committee. He also reiterated that there are no "pre-prescribed" cut-off marks. Every year, there is likelihood of different cut-offs. He submitted that disclosure of information in the nature of actual marks obtained by each candidate would compromise the integrity and efficacy of the examination system. It can also lead to the deciphering of the

scaling system used by the UPSC, which, according to him, constituted intellectual property envisaged under Section 8(1) (d) of the RTI Act. An argument advanced by Mr Mishra for non-disclosure was that further disclosure would enable short-cut techniques by coaching institutes which would reduce the examination process to the level of mere strategizing rather than being a test of substantive knowledge. According to him, this would lead to distortion and would skew any fair application of the UPSC's process. Consequently, the chances of genuinely meritorious candidates, who happen to be third parties in this context, and who have required thorough and deep understanding of the subjects, would be undermined. Therefore, according to Mr Mishra, the larger public interest does not warrant disclosure of such information.

14. Mr Aman Lekhi, the learned senior counsel who appeared on behalf of the respondents 2 to 5 and 7 to 23, submitted that there is no question of the disclosure leading to any undermining of the system. He submitted that the final examination and the interview are yet to be conducted. With regard to the confidentiality argument, he submitted that such an argument had already been rejected by the Gujarat High Court in the case of ***Kamlesh Haribhai Goradia v. Union of India & Another*****: 1987 (1) Guj LR 157**. He submitted that this decision has been approved by the Supreme Court in ***UP Public Service Commission v. Subhash Chandra Dixit and Others*****: 2003 (12) SCC 701** in paragraph 28 thereof. Mr Lekhi submitted that, in any event, the scaling

system has already been disclosed before the Gujarat High Court and the Supreme Court. He also submitted that the disclosure of information would lead to a better system and in this context, he submitted that it would be in general public interest that a public authority should throw open the process of public scrutiny which would result in evolving a better system. He drew support from the impugned decision wherein the Central Information Commission observed as under:-

> "34. The Commission has carefully considered the aspects of public interest involved in the matter. It has also considered the submissions made by the UPSC and also by the appellants. There is no doubt that the issues involve paramount public interest of selecting the best available brains for manning the Civil Services. Equally important is the need to have a transparent system known to each of the aspirants. Contrary to what the UPSC has claimed, this is the only sure means of ensuring a level playing field. A public authority should not be as possessive of its copyright as an ordinary owner who wants to keep his property to his chest. Throwing the process open for public scrutiny might probably result in evolving a system better than what has hitherto been followed by the UPSC. In this context, it is pertinent to refer to the provisions of Section 9 of the RTI Act that reads as under:
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> > 'Without prejudice to the provisions of Section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person <u>other than the State.</u>'

> Thus, a CPIO is empowered to reject a request for information where such a request for providing access to information would involve an infringement of copyright subsisting in a person. The power of the CPIO does not extend to rejecting such a request if the infringement of copyright involved is belonging to the State. Even Section 8(1) (d) also mandates the competent authority to order disclosure of information, if it is satisfied that larger public interest so warrants."

15. Mr Lekhi also made references to a U.K. White Paper and Wade on Administrative Law and Dias on Jurisprudence.

16. Mr Prashant Bhushan, the learned counsel who appeared for the respondent No.24 also submitted that the scaling system already stood disclosed before the Supreme Court. He referred to the counter-affidavit filed by the UPSC in the case of ***UP Public Service Commission v. Subhash Chandra Dixit*** *(supra)* in SLP (c) 23723/2002. In paragraph 3 of the said counter-affidavit, the UPSC has stated that the scaling system being followed by the Uttar Pradesh PSC (UP PSC) is different from that of the UPSC. It was noted that while the UP PSC was following a linear method (also known as the standard deviation method) for its examinations, the UPSC's scaling method was based on the Normalized Equi-Percentile (NEP) method for the optional objective type papers in the Preliminary Examination. Annexure-II to the said counter-affidavit spelt out the scaling methods. The Normalised Equi-Percentile method used by the UPSC has been explained as under:-

"**Normalized-equi percentile method**

This method is based on the assumption of comparability among candidates taking various optional subjects. It is fair to assume that the mental ability (and consequent performance) of candidates in all optional subjects are about the same at very score range. We can assume that top 5% of say History candidates are comparable in ability to the top 5% of say Geography candidates. This assumption can be extended to other score range such as 10%, 15%, 20% etc. Thus, it is possible to statistically adjust the scores in various subjects. Further since the number of candidates for each subject is large (over 1000) it is reasonable to assume that the scaled marks should lie on a normal curve. For the normal distribution curve of each optional subject, mean of 150 and standard deviation of 30 (for a paper with maximum marks of 300) have been taken. The scaled marks are computed using the standard *Statistical Tables-Areas under the standard normal curve-Annexure II (Colly)*."

The same Annexure-II (Colly) also contains the statistical tables-areas under the standard normal curve as given in Schuam's Outline Series, Theory and Problems of Statistics SI(metric) edition. Various other works are also referred to in the said Annexure-II to the said counter-affidavit and they include:-

i) "Research on Examinations in India" issued by the NCERT;

ii) "Scaling Techniques, what, why and how" issued by the Association of Indian Universities;

iii) "A note on the importance of scaling UPSC Examinations by Standardized Methods" by A. Edwin Harper, Jr., June / Sept., 1978.

17. In view of the contents of the said counter-affidavit and its annexure, Mr Prashant Bhushan submitted that the scaling methods were well-known and, therefore, the argument that the disclosure of the cut-offs and actual marks would result in the revealing of the scaling method is a meaningless argument. Secondly, he submitted that the scaling method would, in any event, be known to everybody and, therefore, the argument that one group would misuse and undermine the system is untenable. He referred to the decision of the Supreme Court in the case of ***Sanjay Singh and Another v. UP Public Service Commission, Allahabad & Another*****: 2007 (2) JT 534** which was with regard to the scaling methodology employed for judicial services examination. Mr Bhushan referred to this decision to indicate that the examination system and scaling methodology employed must be under constant review so as to endeavour to evolve a better and more fool-proof system.

18. Mr Mittal, the learned counsel, who appeared on behalf of the respondent No.1 submitted that there was no question of this writ petition being maintainable. He submitted that, in any event, the third direction given by the Central Information Commission itself made it clear that it was left to the UPSC to examine as to whether the disclosure of the scaling method and the keys to the question papers would be in public interest or not. Before that could be done, the petitioner has rushed to this court and filed the writ petition.

19. Since arguments were advanced at length on the question of the scaling method being secret and its public disclosure leading to undermining of the examination system, the UPSC was directed by this court on 20.03.2007 to file a note prepared by an expert to indicate as to how the disclosure of the marks assigned would undermine the scaling system. The note was required to be filed in a sealed cover. That has been done.

20. I have examined the contents of the material placed on behalf of the UPSC in the sealed cover. I shall refer to that shortly. Before doing that, it would be necessary to recount that the scheme of the Civil Services (Preliminary) Examination indicates that it comprises of two objective papers. A paper in General Studies, which is common to all the candidates, carries 150 marks. A Second paper out of 23 optional papers carries 300 marks. Both the common papers (General Studies) and the optional paper are objective type papers and are machine-evaluated by optical mark readers and computers. It is also clear that the Civil Services (Preliminary) Examination is only a screening test and carries no weightage towards the final merit order which is determined solely by the marks obtained by the candidates in the Civil Services (Main) Examination and the interview. There are no "pre-prescribed"[1] cut-off marks to

1 The expression "pre-prescribed" is an unhappy one. What the UPSC means by this expression is that the cut-off marks are not known prior to the Civil Services (Preliminary) Examination for a particular year. It is dependant on the marks obtained by the candidates in the said examination and is applied on the basis of number of candidates to be cleared / shortlisted, which is about 12-13 times the approximate number of vacancies for that particular year.

shortlist the candidates in the Civil Services (Preliminary) Examination. The cut-off marks are fixed on the basis of the marks obtained by the candidates in the said examination so as to clear 12-13 times the number of vacancies in a particular year.

21. It is also clear that upon the recommendations of the Kothari Committee, a scaling methodology was employed since 1979 for the Civil Services (Preliminary) Examination. The scaling methodology is employed only with respect to the optional paper so as to provide a fair and level-playing field for the candidates of all the optional papers which include papers from Humanities, Social Science, Life Science, Physical Science, Engineering, Medical Science, etc. The marks obtained by the candidates in the optional papers are, according to the UPSC, subjected to scaling using computer sub-routines without any manual intervention so as to ensure that the acceptability of the scaled marks is 100 % accurate. As revealed in the counter-affidavit filed before the Supreme Court, referred to above, the scaling method utilized by the UPSC is the Normalized Equi-Percentile Method with, perhaps, some customization. The scaled marks obtained in the optional paper is added to the marks (raw) obtained in the General Studies paper. If the total is below the cut-off, the candidate fails the screening test. If the total is equal to or above the cut-off, he is selected for the Main Examination. An example would illustrate. Let us assume that 'A' is a candidate and he obtained 100 marks in General

Studies and scaled marks of 200 in optional paper. So, his total would be 300 (100+200). If the cut-off mark is more than 300, then he would fail. Otherwise, he would be selected for the Main Examination.

22. The argument advanced on behalf of the UPSC is that if the cut-off mark and the individual marks obtained by the candidates are revealed, then the scaling methodology would become known to the public at large and that would undermine the entire examination system. I have examined the contents of the sealed cover which comprises of two parts: Part-A and Part-B. Part-A purports to be a brief description of the scheme of the Civil Services (Preliminary) Examination and the scaling methodology employed by the UPSC. Part-B is a note on as to how the disclosure of the information sought by the respondents shall undermine the examination system of the UPSC. On an examination of both Part-A and Part-B of the contents of the sealed cover, I am of the view that the scaling methodology indicated therein is already known to the public because of the disclosure of the UPSC itself in the counter-affidavit filed before the Supreme Court as aforesaid. There is nothing new that is mentioned in the contents of the sealed cover with regard to the methodology which is not mentioned in the said counter-affidavit filed before the Supreme Court. It was argued in court, without going into the specifics of any data, that if the information sought is revealed, then a possible fall out would be that a large number of dummy candidates would be pressed into

service by some unscrupulous coaching institutes which would result in the alteration of the scaled marks of certain specific papers and thereby deprive meritorious students in other papers from qualifying as the presence of dummy candidates would influence the cut-off mark. I am unable to agree with this submission made on behalf of the UPSC. The scaled marks, employing the methodology revealed by the UPSC before the Supreme Court, is clearly dependent upon the number of candidates. This is inherent in the formula employed itself. However, what the UPSC seems to ignore is that the cut-off mark itself would change. The scaling methodology adopted by them, which seeks at normalizing the distribution curve, would take care of the abnormalities (skewness) caused by the dummy candidates, if any.

23. It is important to note that prior to the examination, the cut-off mark would not be known. Nor would it be known to any of the coaching institutes as to how many candidates are going to appear in each of the optional papers. Apart from this, it would also not be known to anybody as to what the performance of any candidate would be in each of the papers. It is, therefore, unfathomable that the coaching institutes would be able to undermine the system of examination by disclosure of the cut-off mark of the previous year and the actual marks of the candidates of the previous year when the marks obtained in any year by different candidates is independent of the marks obtained by candidates in any other year. The examination for each year is

entirely independent of the examinations of the other years. So, the data of one year would have no bearing on the data for the next year. The question papers would be different; the candidates would be different; the composition of the number of candidates taking each of the optional papers would be different. The cut-off mark would not be known prior to the examination and, therefore, revealing the data sought by the respondents 2 to 24 in the present case would, in my view, have no bearing on the sanctity of the examination system.

24. What the respondents 2 to 24 have sought is information with regard to an event which has already taken place. Apparently, these persons have already failed to qualify in the screening test. In other words, they have not made the cut-off. The events of determination of the cut-off mark and of screening are already over. These marks, which have been obtained by the candidates who appeared in the Civil Services (Preliminary) Examinations, are not to be counted for the final selection which would be based entirely on the Main Examination and the interview to follow. Therefore, I see no harm in the disclosure of the marks, as directed by the Central Information Commission.

25. As regards the disclosure of the scaling system, nothing further needs to be done as, in my view, the same already stands disclosed by the UPSC in the affidavit filed by them before the Supreme Court.

26. With respect to the disclosure of the model answers to the questions, I am of the view that though the UPSC may have some rights over them, the disclosure would be in larger public interest. Candidates have the right to know where they went wrong. One sure way of informing them in this regard is by disclosing the model answers.

27. As regards the stand taken by the UPSC of taking cover under Section 8 (1) (d) of the RTI Act, I feel that that is wholly inappropriate. First of all, the information that is sought by the respondents 2 to 24 does not fall within the expression of "intellectual property". The data collected by the UPSC is of an event which has already taken place and its disclosure would have no bearing whatsoever on the next years examination. Therefore, even if it is assumed that it is "information" within the meaning of Section 8 (1) (d) of the RTI Act, its disclosure would not harm the competitive position of any third party. In any event, the UPSC being a public body is required to act and conduct itself in a fair and transparent manner. It would also be in public interest that this fairness and transparency is displayed by the revealing of the information sought. Moreover, Section 8 (2), read in its proper perspective, indicates that access to information ought to be provided by a public authority even where it is otherwise entitled to withhold the same, if the public interest in disclosure outweighs the harm to the protected interests. The disclosure of information, as directed by the Central Information Commission, does not, in

any way, in my view, harm the protected interests of UPSC or any third party. In any event, the public interest in disclosure is overwhelming and I am of the view that the Central Information Commission has approached the matter in the correct perspective and has issued the directions for disclosure of the information. Directions (i) & (ii) given by the Central Information Commission do not call for any interference except to the extent that in Direction (ii) there is reference to cut-off marks for General Studies and each of the optional papers whereas, in point of fact, there is only one cut-off mark for the combined total of raw General Studies marks and scaled optional paper marks. Thus, that cut-off needs to be disclosed. As regards direction No.(iii), the same is modified to the extent that the UPSC shall disclose the model answers. As regards the disclosure of the scaling system, it is apparent that the same already stands disclosed, as indicated above, and, therefore, nothing further needs to be done in that regard.

With these modifications in the directions given by the Central Information Commission, the writ petition is disposed of. No costs. The contents of the sealed cover mentioned above be re-sealed and retained in the record.

BADAR DURREZ AHMED
(JUDGE)

April 17, 2007
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